

23-04-406-1653

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 5194

DATE COMPLAINT FILED: April 10, 2001

DATE OF NOTIFICATION: April 17, 2001¹

DATE ACTIVATED: October 12, 2001

EXPIRATION OF STATUTE OF
LIMITATIONS: April 3, 2006

MUR: 5206

DATE COMPLAINT FILED: May 24, 2001

DATE OF NOTIFICATION: June 1, 2001

DATE ACTIVATED: October 12, 2001

EXPIRATION OF STATUTE OF
LIMITATIONS: May 22, 2006

STAFF MEMBER: Lawrence L. Calvert Jr.

COMPLAINANTS: Judicial Watch, Inc., by
Larry Klayman, Esq., General Counsel and Chairman,
and Thomas J. Fitton, President

RESPONDENTS:

MUR 5194:

Thomas Dale DeLay
Tom DeLay Congressional Committee
and David Evans, as treasurer
National Republican Congressional Committee
and Donna M. Anderson, as treasurer

¹ On June 7, 2001, the Commission directed this Office to send appropriate letters to explain that the Commission was withdrawing its earlier notification letters to President Bush regarding these matters. It also rescinded any notification to the Federal Government regarding these matters.

MUR 5206:

National Republican Senatorial Committee
and Stan Huckaby, as treasurer;
Bill Frist, as chairman;
Sam Brownback, as chairman of the "Inner Circle";
Wayne Allard, as a member;
Christopher Bond, as a member;
James M. Inhofe, as a member;
Jeff Sessions, as a member;
Gordon H. Smith, as a member
Thomas Dale DeLay
Tom DeLay Congressional Committee
and David Evans, as treasurer
National Republican Congressional Committee
and Donna M. Anderson, as treasurer

RELEVANT STATUTES: 2 U.S.C. § 434(a)(1)
2 U.S.C. § 434(b)(1)
2 U.S.C. § 434(b)(2)
2 U.S.C. § 434(b)(4)
2 U.S.C. § 434(b)(5)(E)
11 C.F.R. § 100.7(a)(2)
11 C.F.R. § 104.3(b)(1)(iv)
11 C.F.R. § 104.3(b)(2)(v)

INTERNAL REPORTS CHECKED: MUR 4449

FEDERAL AGENCIES CHECKED: Department of Justice

I. GENERATION OF MATTERS

These matters were generated by complaints filed on behalf of Judicial Watch, Inc., by its chairman and general counsel, Larry Klayman, and its president, Thomas J. Fitton. The complaints allege that the National Republican Congressional Committee ("NRCC") and the National Republican Senatorial Committee ("NRSC"). sold "access" to Federal officeholders in violation of 18 U.S.C. § 201, which prohibits bribery, and 18 U.S.C. § 600, which prohibits the provision of employment or any Federal benefit to any person in exchange for political activity.

1 These criminal statutes are within the jurisdiction of the Department of Justice ("DOJ"), not the
2 Commission.² However, the complaints also alleged that the committees violated 2 U.S.C. § 434
3 by failing to report the value of the access to each contributor as an "offset" to the contributor's
4 contribution.

5 The complaint in MUR 5206 and several exhibits attached to it also refer specifically to
6 either the complaint or the circumstances complained of in MUR 5194. Accordingly, the
7 respondents in MUR 5194 were also notified of the complaint in MUR 5206.³ Because of the
8 cross-notification, and because the complaints rest on identical legal theories, they are being
9 handled together in this report.

10 Judicial Watch has sued the Commission in U.S. District Court for the District of
11 Columbia pursuant to 2 U.S.C. § 437g(a)(8), alleging that the Commission has unreasonably
12 delayed action on MUR 5194. *Judicial Watch v. FEC.*, No. 1:01CV01747 (D.D.C.) (complaint

² Because the complainants filed each complaint with DOJ and the Commission simultaneously, the Commission need not consider whether to report the complaints over to DOJ pursuant to 2 U.S.C. § 437d(a)(9). Also on April 10, 2001, complainants filed with the Committee on Standards of Official Conduct of the United States House of Representatives a complaint against Representative Tom DeLay that was virtually identical to the complaint in MUR 5194. MUR 5206, Complaint, Exhibit 4. For similar reasons, the Commission need not consider whether to refer the complaint in MUR 5194 to that committee.

Representative DeLay and his authorized committee submitted as part of their supplemental response in both matters a letter dated July 30, 2001 from Lee J. Radek, then chief of the Public Integrity Section of DOJ's Criminal Division, to Klayman. In the letter, Radek stated that "[w]e have carefully reviewed the facts contained in your correspondence and we have concluded that those facts do not suggest potential violations of either [18 U.S.C. §§ 201 or 600.]"

³ In both matters, this Office notified the "National Republican Congressional Committee" and Donna M. Anderson, as treasurer. A response was filed on behalf of the "National Republican Congressional Committee" in MUR 5194. No separate response was filed in MUR 5206. There are, in fact, two registered, affiliated NRCC committees: the National Republican Congressional Committee – Contributions ("Contributions Committee") and the National Republican Congressional Committee – Expenditures ("Expenditures Committee"). Anderson is treasurer of both committees. Disclosure reports indicate that the overwhelming majority of the Contributions Committee's disbursements consist of transfers to the Expenditures Committee. Based on the apparent functions of the two committees, it appears that the facts complained of concern activities of the Contributions Committee. Accordingly, this Office's recommendations pertain to that committee.

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1 filed August 17, 2001). To date, it has not filed a similar suit about MUR 5206, nor has it
2 amended the complaint in its initial suit to make similar allegations about MUR 5206.

3 **II. FACTUAL AND LEGAL ANALYSIS**

4 **A. Applicable Law**

5 The Federal Election Campaign Act of 1971 ("the Act"), as amended, requires all
6 political committees to file reports of their receipts and disbursements. 2 U.S.C. § 434(a)(1).
7 Among other things, each report must contain, for the reporting period and the calendar year to
8 date, the total amount of all of the committee's disbursements, 2 U.S.C. § 434(b)(4), and the total
9 amounts of disbursements in each of several specified categories, one of which is "contribution
10 refunds and other offsets to contributions." 2 U.S.C. § 434(b)(4)(F). Moreover, each report must
11 contain the name and address of each "person who receives a contribution refund or other offset
12 to contributions from the reporting committee where such contribution was reported under
13 paragraph (3)(A) of this subsection, together with the date and amount of such disbursement."
14 2 U.S.C. § 434(b)(5)(E). The Commission's regulations further require that committees report
15 separately the totals of itemized and unitemized offsets to contributions (including refunds).
16 11 C.F.R. § 104.3(b)(1)(iv) and (2)(v).

17 **B. Facts**

18 **1. Background – MUR 4449 and Associated Litigation**

19 Judicial Watch alleged similar reporting violations by different respondents in litigation
20 stemming from MUR 4449, but the merits of the allegations were not resolved because Judicial
21 Watch had no standing to pursue the litigation. Specifically, in their administrative complaint in
22 MUR 4449, Klayman and Judicial Watch alleged that the Clinton Administration had sold seats

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1 on U.S. Department of Commerce foreign trade missions in exchange for contributions to the
2 Democratic National Committee ("DNC"). However, while they claimed the alleged activity
3 was "illegal," they did not cite any specific law that the activity violated. The Commission
4 accepted the complaint, but the case was not activated. After the case had rested in the Central
5 Enforcement Docket for 12 months, the Commission exercised its prosecutorial discretion to take
6 no action in the matter and closed it as "stale" on December 2, 1997.

7 Judicial Watch sued the Commission pursuant to 2 U.S.C. § 437g(a)(8). The
8 Commission moved to dismiss or, in the alternative, for summary judgment on the grounds that
9 Judicial Watch had no standing. *Judicial Watch v. FEC*, 10 F. Supp. 2d 39 (D.D.C. 1998). The
10 Commission argued that the case was controlled by *Common Cause v. FEC*, 108 F.3d 413 (D.C.
11 Cir. 1997), in which the D.C. Circuit held that a watchdog group had no standing to sue under
12 Article III of the U.S. Constitution where its interest was in the Commission "get[ting] the bad
13 guys" rather than in receiving information that committees are required to make public under the
14 Act. *Id.* at 417. Faced with this precedent, Judicial Watch responded that the value to the DNC's
15 contributors of seats on the trade missions constituted "offsets" reportable by the DNC as
16 disbursements, and that Judicial Watch and its members had an informational interest in knowing
17 who the recipients of these "offsets" were. Judicial Watch had not made this argument in either
18 its administrative complaint to the Commission or its complaint in the lawsuit. Nevertheless, the
19 district court held that Judicial Watch had standing and, even though the Commission had not yet
20 answered the complaint, the court granted Judicial Watch summary judgment *sua sponte* and
21 remanded the matter to the Commission. *Judicial Watch*, 10 F. Supp. 2d at 42-43.

1 The Commission appealed, and the D.C. Circuit, applying *Common Cause* in a *per*
2 *curiam* opinion, found that Judicial Watch had no standing to sue because it had “not even made
3 a nominal allegation of reporting violations. Nowhere in its administrative or civil complaint did
4 Judicial Watch mention disclosure requirements or suggest that it desired documents that the
5 alleged violators were required to disclose.” *Judicial Watch v. FEC*, 180 F.3d 277, 278 (D.C.
6 Cir. 1999).

7 2. MUR 5194

8 The complaint in MUR 5194 is based primarily on an Associated Press news story
9 concerning prerecorded NRCC fundraising calls featuring the voice of House Majority Whip
10 Tom DeLay. MUR 5194, Complaint at Exhibit 1. In response, the NRCC submitted the text of
11 the recorded message. MUR 5194, NRCC Response at Exhibit 7. It appears that anyone
12 receiving one of the calls would, upon picking up the phone, hear the recorded voice of
13 Representative DeLay saying the following:

14 This is Congressman Tom DeLay and I've been asked to contact key
15 business leaders *like you!* The truth is that the election of President Bush
16 represents an *unprecedented* opportunity to enact sound economic policies that
17 will benefit *you* and *your business!* I'm talking about social security reform and
18 tax reform! We need to pay down the debt – and fix the health care problems in
19 this country! *And the fact is*, to do this we want people like YOU! . . . People
20 with common business sense . . . People with a good reputation, *and a record of*
21 *success!* That is why I am asking you to serve as an *Honorary* Member of our *new*
22 Business Advisory Council. As an Honorary member you'll be invited to
23 meetings with top Bush Administration officials, where your opinions on issues
24 like Tax Reform will be heard! You'll also have the opportunity to provide *your*
25 input to congressional leaders, and receive our distinguished National Leadership
26 Award! To get this country moving in the right direction we need *key*
27 professionals and business people *like you*, and I *urge you* to stay on the line for
28 just a moment so my aide can give you the details on how *you* can get involved!
29

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1 *Id.* (all emphasis in original).⁴ Anyone who remained on the line was apparently connected with
2 a telemarketer who requested “ ‘a one-time contribution of \$300 to \$500’ ” to the NRCC to
3 support “ ‘a media campaign . . . to get some tax relief.’ ” MUR 5194, Complaint at Exhibit 1
4 (copy of AP story purporting to quote from telemarketer’s script). A confirmation letter for the
5 contribution would apparently be sent the next day. *See* NRCC Response at Exhibit 8 (sample
6 confirmation letter, bearing indicia that phone call program was operated for NRCC by
7 telemarketing vendor).

8 According to the AP story, “people familiar with the fund drive say it is part of an effort
9 to raise up to the maximum \$20,000 in donations to the party from each donor.” MUR 5194,
10 Complaint at Exhibit 1. The complainants apparently seized on this line from the news story,
11 and its account of that portion of the DeLay tape that referred to the contributor being “invited to
12 meetings with top Bush Administration officials,” to send a letter to DeLay, accusing him of
13 “selling meetings with Bush Administration officials for \$20,000 donations.” MUR 5194,
14 Complaint at 3 and Exhibit 3. The complainants incorporated the allegation into their complaint
15 by asserting that a response to their letter from DeLay’s counsel, which they characterized as
16 nonresponsive, constituted an admission of the accusation. *Id.* at 4.

17 In response to the complaint, the NRCC stated that the purpose of the calls, in addition to
18 fundraising, was to “invite[] past supporters of the NRCC to become Honorary Members of the
19 NRCC’s Business Advisory Council, a grassroots effort to mobilize and involve small business

⁴ In early April 2001, after it became aware of Judicial Watch’s allegations but before the complaint was filed in MUR 5194, the NRCC changed the DeLay tape to delete the phrase “with top Bush Administration officials.” *Id.*

men and women across America.” MUR 5194, NRCC Response at 4. The NRCC acknowledged that “[p]arty strategy meetings” are a “component of the . . . Council, and Congressional Committee Members, staff, supporters, and even from time to time people in the Administration attend NRCC strategy meetings.” *Id.* In an April 6, 2001 letter to Klayman that is an exhibit to both the complaint and the NRCC response, counsel for the NRCC further acknowledged that

One aspect of the Council are [sic] periodic forums, designed to keep . . . grassroots activists informed. We are having one next month to provide education on tax relief – a debate in which our entire country is currently engaged. Administration officials have received invitations to join us, and share their views on that debate, and to hear from grassroots activists.

MUR 5194, Complaint at Exhibit 6; NRCC Response at Exhibit 6.

Other donors or potential donors were apparently invited to the “forum” on “tax relief.” The newspaper *Roll Call* reported on a fax

sent out by [NRCC] to one donor, purportedly from [Speaker of the House J. Dennis] Hastert, inviting that donor to participate in the NRCC’s “Tax Reform Workshop” in early May.

Lobbyists and business leaders were offered a breakfast meeting with Hastert, dinners with GOP lawmakers and an invitation to a policy forum that included several top administration players, such as White House Deputy Chief of Staff Josh Bolton.

MUR 5206, Complaint at Exhibit 4.⁵

While no information in either complaint or the responses indicates whether the “tax reform workshop” occurred or whether Bush Administration officials attended, an article in the

⁵ Interestingly, although *Roll Call* reported that Judicial Watch released the fax at a press conference at which it announced its “lawsuit against DeLay and the NRCC,” Judicial Watch did not attach the fax to either of its complaints in these matters. The *Roll Call* article further reported that “Hastert and his staff” claimed that the fax was sent “without their approval.” *Id.*

1 online magazine *Salon* indicates that it did occur, albeit without Speaker Hastert's participation,
2 and that at least one Administration official, White House Political Director Ken Mehlman,
3 attended. See <http://www.salon.com/politics/feature/2001/05/11/fundraising/print.html>>, visited
4 October 15, 2001.

5 **3. MUR 5206**

6 The complaint in MUR 5206 principally concerns a "White House Briefing Series" that
7 allegedly consisted of a number of panel discussions open to members of the "Republican
8 Senatorial Inner Circle" that were to be held on May 24, 2001. The complaint quotes extensively
9 from, and includes as an exhibit, what appears to be an agenda for an event of some sort, possibly
10 sponsored by the NRSC. See generally MUR 5206, Complaint at 5-7 and Exhibit 3. The
11 complaint alleges that the agenda was part of an NRSC "solicitation for Inner Circle members,"
12 *id.* at 5, but complainants do not appear to have included the entire document as part of the
13 exhibit. According to a Gannett News Service article about the solicitation that was also attached
14 as an exhibit, "[f]or \$10,000 each, or \$15,000 per couple, GOP faithful can become life members
15 of the Republican Senatorial Inner Circle, an adjunct of the [NRSC], and spend three days
16 rubbing shoulders with senators, Cabinet officials, and diplomats May 22-24 at the Capital
17 Hilton Hotel."⁶ *Id.* at Exhibit 1.

18 According to the agenda, the "White House Briefing Series" included panels on health
19 care, for which invited speakers included Health and Human Services Secretary Thompson and
20 six Republican senators; global competitiveness, for which invited speakers included four

⁶ The "Republican Senatorial Inner Circle" appears not to be a separate organization, but instead appears to be the name of a fundraising project or donor recognition level of the NRSC.

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1 Republican senators; education, for which invited speakers included Education Secretary Paige
2 and three Republican senators; and energy, for which invited speakers included Energy Secretary
3 Abraham and three Republican senators. *Id.* at Exhibit 3. In addition to the "White House
4 Briefing Series," "Inner Circle" members could apparently attend a dinner honoring Commerce
5 Secretary Evans on the evening of May 23. The "Life Members" apparently had the opportunity
6 to attend a "cocktail reception and photo-op" with Secretary Evans prior to the dinner. *Id.*

7 It is unclear whether the briefings actually took place as described on the agenda. The
8 agenda stated that it was "planned as of 3/30/01" and that the speakers were "[i]nvited." *Id.*
9 The joint response of the NRSC and the individual senators named as respondents asserted
10 simply that the complaint "alleged no conduct which violates FECA or the Commission's
11 regulations." MUR 5206, NRSC Response at 1. According to one news account, "[a] two-day
12 'White House Briefing Series' promised to 500 members of the Inner Circle, who pay at least
13 \$500 a year, has turned into a dinner address by Commerce Secretary Donald L. Evans after other
14 Cabinet members reported schedule conflicts." Mike Allen and George Lardner Jr.,
15 "Republicans Defend Cheney's Reception," *Washington Post*, May 22, 2001, at A2.⁷

16 C. Analysis

17 The complainants renew here their argument from *Judicial Watch v. FEC* that a meeting
18 with "Administration officials, sold to a contributor, is a contribution 'offset' " that must be
19 reported as a disbursement by the committee that sells the meeting and receives the contribution.

⁷ The assertion in the *Washington Post* article indicates that much of the complaint in MUR 5206 may be moot. However, because "life members" of the "Inner Circle" appear to have had an opportunity to meet Secretary Evans personally, and because such an opportunity could be construed as the type of "meeting" that complainants allege is being "sold," the analysis below does not treat MUR 5206 as moot.

1 MUR 5194, Complaint at 13; MUR 5206, Complaint at 19. But they cite no Commission
2 precedent to support this novel theory, nor can they, for none exists.

3 To the contrary, the Commission has in the past interpreted the contribution-offset
4 reporting requirements of 2 U.S.C. § 434(b)(4)(F) and (5)(E) in a straightforward manner. The
5 Commission has explained that when a political committee provides monetary refunds to
6 contributors, the committee "is required to report refunds as offsets to contributions . . ."
7 Advisory Opinion 1996-52; *accord*, Advisory Opinions 1988-41 and 1987-11.

8 Similarly, the Commission has interpreted the term "offsets" narrowly in the context of
9 similar provisions, 2 U.S.C. § 434(b)(2)(I) and (3)(F), that govern the reporting of offsets to
10 operating expenditures. For example, the Commission found that payments for advertising in the
11 newsletter of a political committee would be considered contributions to the committee, and
12 could not be characterized as "offsets to operating expenditures," because the "activity being
13 funded by the payments would be 'in connection with' or 'for the purpose of influencing' a
14 Federal election" and because "no exception in the Act or regulations allows these funds to be
15 treated as miscellaneous or other receipts." Advisory Opinion 1990-3.

16 This straightforward treatment of the concept of "offsets" is consistent with the Act's
17 basic reporting requirements and contribution limitations. Section 434 contains many specific
18 requirements. However, perhaps the most fundamental information that it requires committees to
19 report includes the amount of cash on hand at the beginning of the reporting period, 2 U.S.C.
20 § 434(b)(1); the total amount of all receipts for the reporting period and calendar year, 2 U.S.C.
21 § 434(b)(2); and the total amount of all disbursements for the reporting period and the calendar
22 year, 2 U.S.C. § 434(b)(4). The determination of these figures yields another figure that is

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1 reported on Form 3, the cash on hand at the close of the reporting period. This is simple cash
2 accounting, or what Section 434's drafters called a " 'balance sheet' approach" to reporting.
3 H.R. Rep. No. 96-422 at 16, *reprinted in FEC, Legislative History of the Federal Election*
4 *Campaign Act Amendments of 1979*, at 200 (1980).

5 Moreover, the Commission has provided by regulation that the "entire amount paid to
6 attend a fundraiser or other political event and the entire amount paid as the purchase price for a
7 fundraising item sold by a political committee is a contribution." 11 C.F.R. § 100.7(a)(2). Thus,
8 as described in the Commission's *Campaign Guide for Political Party Committees* (1996),
9 "when a person buys a \$50 ticket to a fundraising dinner, the amount of the contribution is \$50,
10 regardless of how much the meal costs the committee." *Campaign Guide* at 6. This
11 interpretation has its roots in Advisory Opinion 1975-15, in which the Commission explained
12 that

13 the fact that the contributor obtains an item of intrinsic value does not remove the
14 transaction from [the] definition of contribution. The items offered by the
15 Campaigns are an inducement to the contributor to give money . . . If a
16 contributor wants the candidate to get maximum value from any contribution, then
17 he or she may contribute money directly without putting the candidate to the
18 expense of providing an inducement.

19
20 Put differently, the regulation protects the integrity of the contribution limits by ensuring that no
21 contributor may give more than the statutory limitation in *gross* contributions, regardless of
22 whether the committee offers a valuable inducement to contribute.

23 Even if one assumed that "access" were a commodity that could be both "sold" and
24 valued, and that the sale of such access occurred in these cases, complainants' theory could not
25 be implemented without doing violence either to the "balance sheet" reporting scheme of

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1 2 U.S.C. § 434(b) or the “full purchase price is a contribution” rule of 11 C.F.R. § 100.7(a)(2).
2 Implementation of complainants’ theory would require committees to do one of two things.
3 First, one could conceivably implement complainants’ theory by requiring committees to report
4 the value of the access to each contributor as a disbursement and simply to inflate the total
5 amount of their disbursements by some amount representing the total value of the “access.” This
6 appears to be what complainants would have the Commission do. But because the committees
7 did not spend money to acquire the “access” to sell, the inflation of the committees’ total
8 disbursements would be artificial, and would therefore disrupt the statute’s carefully crafted
9 “balance sheet” relationship between receipts, disbursements, and cash on hand.⁸

10 Alternatively, one could restore the “balance sheet” relationship by reducing each
11 contributor’s contribution by the amount of the “value” of the access. This approach would be
12 more consistent with the ordinary meaning of “offset,” but it would be contrary to 11 C.F.R.
13 § 100.7(a)(2). If one accepted that “access” to Secretary Evans, for example, were a salable
14 commodity, there would be no reason to treat its value any differently from the value of the food
15

⁸ Moreover, even if a committee had spent money to acquire a valuable asset to sell as a fundraising premium, that spending would be the reportable disbursement; reporting the transfer of the value to the contributor as an “offset” would require double-counting on the disbursement side of the “balance sheet.” Similarly, if a contributor gave an asset to a committee to be sold to other contributors as a fundraising premium, the “balance sheet” would be preserved by reporting the in-kind contribution as both a receipt and a disbursement and the later purchase as an ordinary contribution without any offset. See 11 C.F.R. § 104.13(a)(2). The only exception would be if the item was not liquidated by the end of the reporting period in which it was contributed, but even then the in-kind contribution would be reported “as a memo entry (not cash)”, and the later purchase would again be reported as an ordinary contribution without any offset. See 11 C.F.R. § 104.13(b).

Of course, these latter provisions do not apply in this matter because, even if one accepted the argument that “access” to the Administration officials was “sold,” it appears that what the Administration officials provided to be “sold” was their own time, and the personal services of individuals provided without compensation are not contributions under the Act. 2 U.S.C. § 431(8)(B)(i). Even if one argued that the Administration officials were appearing in their official capacities, the Federal government could not be said to have made a “contribution” to the NRSC or NRCC, because under the Act only a “person” may make a contribution, 2 U.S.C. § 431(8)(A)(i), and the Federal government is specifically excluded from the definition of “person,” 2 U.S.C. § 431(11).

1 or entertainment at the NRSC's dinner honoring him.⁹

2 These inconsistencies with other parts of the Act or the Commission's regulations make
3 clear that however one might characterize the "value" of any "access" to Administration officials
4 enjoyed by the contributors in these matters, that value cannot be characterized as an "other
5 offset to contributions" within the meaning of 2 U.S.C. § 434(b)(4)(F).

6 Complainants claim that in the previous litigation they "demonstrated" that the value
7 received by contributors to the DNC constituted "'offsets to contributions,' 'contribution
8 refunds' or 'other disbursements' that had to be reported[.]" MUR 5194, Complaint at 14-15;
9 MUR 5206, Complaint at 21. In fact, they did no such thing. Although the district court's
10 decision in *Judicial Watch* was reversed for lack of standing, the court of appeals made it clear
11 that the district court litigation had not reached the stage where a conclusion could be reached on
12 the merits of Judicial Watch's allegation that dismissal of MUR 4449 was contrary to law.
13 "[I]ndisputably," the court of appeals noted, "the District Court's sua sponte grant of summary
14 judgment for Judicial Watch on the merits was improper, where the only issue before the courts
15 at the time of its ruling was the agency's jurisdictional challenge, and the agency had not yet
16 answered Judicial Watch's complaint" in the lawsuit. 180 F.3d at 278. And even the district
17 court's disposal was no more than a remand to the Commission so it could, for the first time,
18 consider Judicial Watch's offset theory on its own merits or lack thereof. Thus, the district court

⁹ In fact, with an intangible commodity such as "access," treatment of the supposed value of the access as an "offset" that reduced the amount of the contributor's contribution could go so far as to render the Act's contribution limits meaningless. In the absence of the kind of market value one could discern for a tangible commodity, it would be logical to determine that the value to a contributor of an opportunity to attend a "cocktail reception and photo-op" with Secretary Evans was the entire \$10,000 cost of "life membership" in the Inner Circle. If the contributor's contribution were "offset" by that amount, an individual contributor could conceivably contribute an infinite amount to the NRSC simply by going to NRSC fundraising events where Administration officials appeared.

specifically disavowed that it was “reach[ing] the merits of Plaintiff’s allegations,” 10 F. Supp. 2d at 42, and stated only that seats on the trade missions “*could* be classified as an ‘offset’ ” and that “the DNC and the Clinton/Gore 1996 Reelection committee *may* have had an obligation to report” them. *Id.* (emphasis added). Given the procedural posture of that case, nothing in *Judicial Watch* constitutes any precedent contrary to the analysis in this report.

To summarize, any value to the contributors of “access” to Bush Administration officials through the fundraising activities at issue in these matters cannot be described as an “offset to contributions,” and because it cannot, neither the NRCC nor the NRSC was obligated to report it to the Commission. As for the other named respondents, there are no facts in the complaints or responses to indicate that any of them violated any provision of the Act. Accordingly, this Office recommends that the Commission find no reason to believe that the National Republican Congressional Committee—Contributions or Donna M. Anderson, as treasurer, or that the National Republican Senatorial Committee or Stan Huckaby, as treasurer, violated 2 U.S.C. § 434(b); find no reason to believe that Thomas Dale DeLay, the Tom DeLay Congressional Committee or David Evans, as treasurer, Bill Frist, Sam Brownback, Wayne Allard, Christopher Bond, James M. Inhofe, Jeff Sessions, or Gordon H. Smith violated any provision of the Act in connection with these matters; approve the appropriate letters; and close the files.

III. RECOMMENDATIONS

A. In MUR 5194:

1. Find no reason to believe that the National Republican Congressional Committee—Contributions or Donna M. Anderson, as treasurer, violated 2 U.S.C. § 434(b).

2. Find no reason to believe that Thomas Dale DeLay or the Tom DeLay Congressional Committee or David Evans, as treasurer, violated any provision of the Act in connection with this matter.

3. Close the file.

B. In MUR 5206:

1. Find no reason to believe that the National Republican Senatorial Committee or Stan Huckaby, as treasurer, violated 2 U.S.C. § 434(b).

2. Find no reason to believe that the National Republican Congressional Committee – Contributions or Donna M. Anderson, as treasurer, violated 2 U.S.C. § 434(b).


3. Find no reason to believe that Thomas Dale DeLay, Bill Frist, Sam Brownback, Wayne Allard, Christopher Bond, James M. Inhofe, Jeff Sessions, Gordon H. Smith, or the Tom DeLay Congressional Committee or David Evans, as treasurer, violated any provision of the Act in connection with this matter.

4. Close the file.

C. In both matters:

1. Approve the appropriate letters.

12/6/01
Date


Lawrence H. Norton
General Counsel